MONTANA LEGISLATIVE HISTORY

Chapter 306 1995

Bill H 359 S _____ Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 13	✓C	Hearing Date(s)	Mar 14	✓C
	Feb 15	✓C			C
		C			C
		C			C
Date Out	Feb 15	✓C		Mar 14	✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

2/15	2ND READING PASSED	94	1
2/16	3RD READING PASSED	99	1
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/10	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED		
3/17	2ND READING CONCURRED	47	0
3/18	3RD READING CONCURRED	46	0
	RETURNED TO HOUSE		
3/20	SIGNED BY SPEAKER		
3/22	SIGNED BY PRESIDENT		
3/23	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 247		
	EFFECTIVE DATE: 10/01/95		

HB 356 INTRODUCED BY BOHARSKI, ET AL.

IMPLEMENT TRUTH IN SENTENCING BY MAKING TIME A PRISONER WILL ACTUALLY SERVE MORE APPARENT

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

1/27	INTRODUCED		
1/27	FIRST READING		
1/27	REFERRED TO JUDICIARY		
1/28	FISCAL NOTE REQUESTED		
2/02	FISCAL NOTE RECEIVED		
2/02	FISCAL NOTE PRINTED		
2/13	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	96	2
2/20	3RD READING PASSED	96	4
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/14	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/24	2ND READING CONCURRED AS AMENDED	39	10
3/25	3RD READING CONCURRED	40	10
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	94	1
4/03	3RD READING AMENDMENTS CONCURRED	98	0
4/05	SIGNED BY SPEAKER		
4/06	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
4/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 372		
	EFFECTIVE DATE: 04/12/95—SECTIONS 1, 2, 4-6, 8-11, 12(1) & 13		
	EFFECTIVE DATE: 01/31/97—SECTIONS 3, 7, & 12(2)		

HB 357 INTRODUCED BY BOHARSKI, ET AL.

CREATE A COMMISSION ON SENTENCING TO STUDY SENTENCING PRACTICES AND GUIDELINES AND EFFECTS OF SENTENCES

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

1/27	INTRODUCED

1/27	FIRST READING		
1/27	REFERRED TO JUDICIARY		
1/28	FISCAL NOTE REQUESTED		
2/03	FISCAL NOTE RECEIVED		
2/03	FISCAL NOTE PRINTED		
2/13	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED		
2/18	2ND READING PASSED	92	3
2/20	3RD READING PASSED	96	4
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/14	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/24	2ND READING CONCURRED	39	8
3/25	3RD READING CONCURRED	41	7
	RETURNED TO HOUSE		
3/27	SIGNED BY SPEAKER		
3/28	REVISED FISCAL NOTE REQUESTED		
3/28	SIGNED BY PRESIDENT		
3/28	TRANSMITTED TO GOVERNOR		
3/28	REVISED FISCAL NOTE RECEIVED		
3/31	REVISED FISCAL NOTE PRINTED		
3/31	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 306		
	EFFECTIVE DATE: 03/31/95		

HB 358 INTRODUCED BY TREXLER, ET AL.

CHANGE PROTEST REQUIREMENTS FOR ZONING ADOPTION

1/27	INTRODUCED		
1/27	FIRST READING		
1/27	REFERRED TO LOCAL GOVERNMENT		
2/09	HEARING		
2/14	TABLED IN COMMITTEE		
2/17	COMMITTEE REPORT—BILL PASSED		
2/18	2ND READING PASSED	66	33
2/21	3RD READING PASSED	74	25
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO LOCAL GOVERNMENT		
3/21	HEARING		
3/25	COMMITTEE REPORT—BILL CONCURRED		
3/29	2ND READING CONCURRED AS AMENDED	50	0
3/30	3RD READING CONCURRED	39	11
	RETURNED TO HOUSE WITH AMENDMENTS		
4/05	2ND READING AMENDMENTS NOT CONCURRED	93	2
4/05	CONFERENCE COMMITTEE APPOINTED		
4/07	HEARING		
4/07	CONFERENCE COMMITTEE REPORT NO. 1		
4/08	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	92	6
4/10	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	79	19
	SENATE		
4/06	CONFERENCE COMMITTEE APPOINTED		
4/07	CONFERENCE COMMITTEE REPORT NO. 1		
4/08	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0

Vote: **The motion carried unanimously.**

Motion: **REP. MC CULLOCH MOVED HB 474 DO PASS AS AMENDED.**

Discussion: **REP. SOFT** said he hoped that the bill would make the 16 hours of training mandatory even though 40 training hours would be optional.

Vote: **The motion carried unanimously, 17 - 0. (REP. MC GEE voted by proxy and REPS. SHEA and WYATT were absent.)**

EXECUTIVE ACTION ON HB 457

Motion: **REP. AHNER MOVED HB 457 DO PASS.**

Motion/Vote: **REP. ANDERSON MOVED TO ADOPT AMENDMENTS. EXHIBIT 11 The motion carried unanimously.**

Motion/Vote: **REP. TASH MOVED HB 457 DO PASS AS AMENDED. The motion carried unanimously, 17 - 0. (REP. MC GEE voted by proxy and REPS. SHEA and WYATT were absent.)**

{Tape: 2; Side: B}

CHAIRMAN CLARK appointed a subcommittee to look at the juvenile bills. **REP. MOLNAR, Chairman, REP. KOTTEL and REP. SOFT** were appointed.

HEARING ON HB 356 & HB 357

Opening Statement by Sponsor:

REP. WILLIAM BOHARSKI, HD 79, combined his opening remarks for both HB 356 and HB 357. HB 356 was called the "truth-in-sentencing bill." He said there are complicated formulas for figuring out how long it is that an offender will serve in prison when sentenced for a crime as well as defining "good time" and when an inmate would start parole. The first intent in HB 356 is to eliminate the formula which was built into the statutes over the years. The "good time" formula and the classifications of dangerous and nondangerous would be eliminated. Further, a percentage of the sentence would be established before eligibility for parole would be considered. He explained the sections of the bill and presented his arguments for it.

HB 357 would set up a study commission because the rules should not be changed in the middle of the game and everyone needs to be involved in the changes. HB 357's fiscal note was smaller than it ought to be because of the cost of conducting the study. But in comparison with the costs of incarceration, the cost of a study commission to be sure implementation of new sentencing laws is done correctly has value worth considering.

Proponents' Testimony:

Rick Day, Director, Department of Corrections and Human Services (DCHS), presented his testimony on behalf of the department and the Governor in favor of HB 356 and HB 357. **EXHIBITS 14 and 15** He circulated a variety of statistical reports to the committee in consideration of these bills. **EXHIBITS 16 - 19**

John Connor, Department of Justice, Montana County Attorneys' Association and member of Governor's Advisory Council on Corrections and Correctional Policy, spoke in support of the companion bills. He said that **Judge Sherlock** who was the chairman of the Governor's Advisory Council had asked that his support also be voiced to the committee. He described the current system as an "absolute mess." He said it was a classic example of how legislation becomes a mess when it is put together through a piecemeal process over a period of years. As a member of the truth-in-sentencing subcommittee, they were initially interested in just throwing out the "good time" concept and described the reasoning behind that and the reasons for changing that approach. He described the inconsistencies in the system and the process for arriving at the intent and content of the proposed legislation in HBs 356 and 357.

CHAIRMAN CLARK relinquished the chair to **VICE CHAIR ANDERSON.**

{Tape: 2; Side: B; Approx. Counter: 40.5}

Anita Richards, testified in support of the bills as a victim of murder and of the current system. **EXHIBITS 20 and 21**

Sharon Bakerson, Majority Against Child Molestation (MACeM), supported the bills. She questioned the effectiveness of the elimination of the dangerous/nondangerous categories on other bills being considered and when it would become effective and how it would be handled in the interim. She expressed worry that persons currently incarcerated would be paroled without regard to their threat to society.

Mike Salvagni, Gallatin County Attorney, rose in support of the two bills. He also served on the Governor's Advisory Council and chaired the Sex Offenders' Subcommittee. He expressed his frustration with the current system which he characterized as a "fraud." He said the designations of dangerous and nondangerous offenders was a fallacy and nothing more than a component in a formula to determine parole eligibility having nothing to do with whether or not an offender is dangerous or nondangerous. He shared examples to support his testimony. He felt these bills were the beginning of the process to restore confidence in the criminal justice system. He endorsed HB 357 as a means by which sentencing guidelines can be examined clearly by all three branches. He strongly urged support.

Craig Thomas, Executive Director, Board of Pardons, rose on behalf of the Board of Pardons in support of both bills. These bills would directly impact how the Board does business and they had significant input into the drafting of the bill. He cited his experience in the law enforcement field and with the current frustrating process of pardons. He addressed the dangerous/non-dangerous designations as being confusing and irrelevant to the actual process.

Laurie Koutnik, Executive Director, Montana Christian Coalition, gave testimony in favor of passage of HB 356 and HB 357. **EXHIBIT 22**

{Tape: 3; Side: A}

Ron Richards spoke as a proponent of HBs 356 and 357. He said they will bring sentencing in line with what judges' and prosecutors' intentions are as well as what the people perceive about sentencing. He believed they would simplify the parole process. "Good time" behavior in prison should be expected and not rewarded. To make it work, he felt it would be imperative that the legislature repeal the "good time" allowance so that the bill would have continuity. He did not believe it was good to empower an administrator to grant "good time" for whatever reason he might choose which could include an attempt to reduce the prison population. He recognized that this as well as other legislation before this session would cost a significant amount of money, but he and other Montanans were prepared to pay it. He pointed out that there is no legislative oversight in corrections policy. He said that though the DCHS director is a cabinet level position, for the department to do its job, the legislature must mandate that punishment be sure, timely and consistent. He cited DCHS policy 553 as an example in support of dropping the dangerous offender categorization. He believed sentencing should reflect the severity of the crime and is the tool by which the legal system meters out punishment for crime. He said that HB 356 attempted to do this and was a common-sense approach which would work much better than the existing sentencing procedure. He felt the commission which would be established by HB 357 was imperative.

CHAIRMAN CLARK resumed the chair.

{Tape: 3; Side: A; Approximate counter: 8.5.}

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. ANDERSON asked how effective the "good time" system is in controlling inmates' behavior and how "bad time" would work in

increasing the sentences. He questioned how in taking away all "good time" parole administratively would work.

Mr. Day responded that the role of "good time" in the system and its effectiveness is a split decision. That was why they were advocating the sentencing commission to take another look at it. The general feeling was that "good time" had the advantage in encouraging inmates to participate in rehabilitative programs and a disadvantage might be that there are inmates who are not sincere in their participation. In eliminating "good time" those programs would continue to be needed for successful parole board completion and their incentive would be for parole eligibility rather than accumulation of "good time." Though "good time" might have merit, it was felt to be generally nonproductive in rehabilitation.

REP. ANDERSON asked how often the Parole Board meets so that the sentencing can be adjusted to reflect consequences for "bad time."

Mr. Day said that the department does not increase sentences. Under revised "good time" an inmate would be sentenced and then "good time" would be awarded on a day-for-day basis. Then the department would administer it by reducing the "good time" for disciplinary violations in the system. There is a hearing system which would provide the method for taking away the "good time." The Board meets monthly. When a prisoner becomes eligible, the Board evaluates their individual case and assesses whether they would be successful on parole.

REP. ANDERSON had been concerned that at the effective date, there would be a large number of parole hearings. He understood that the department essentially increases the sentences by taking away "good time" without a parole hearing.

Mr. Day said they actually extend the time they are in prison under their original sentence. They can't arbitrarily extend the sentence itself.

REP. ANDERSON referred to page 3, line 18 and the effective date and wondered if it would be reduced to one-fourth at the time the "good time" would be removed.

Mr. Day said they were not really reducing anything. Under the nondangerous designation, they are eligible for parole in one quarter of the sentence less "good time," which means one eighth. Under current law, if they are designated dangerous, it is one-half less "good time," which means one quarter. Actually the bill would eliminate the minimum for nondangerous offenders. The minimum for consideration is the dangerous offender time but it is in clear terms so they all know what it means; i.e., 25%. On the "good time" they did not phase that in because of the current system. Any persons currently incarcerated cannot lose anything that would be _____ (inaudible). Essentially the

department can't take away time previous statute ordered to them. In clarifying "good time" they were cleaning up the "mess" over the two year period [before the new law becomes effective] and creating a flat system which will not result in legal actions. Then "good time" would be eliminated. This would impact the prison population and they are planning for that by hoping to have new prison cells on line in the spring of 1997.

REP. TASH asked if those same parole eligibility criteria would provide the necessary incentives for prisoner involvement in programs.

Mr. Day felt it would. He would not say that it was without concern about the role of "good time" as a time-honored tradition. That was also reason for taking the time with the sentencing commission to look at the issues prior to the next session and the implementation date.

REP. MC GEE asked if serving one-fourth of a prisoner's full time was an appropriate percentage if they did not have to worry about the numbers of prisoners in the facility.

Mr. Day said he couldn't separate himself enough from law enforcement to answer it clearly and that he did not know because in some cases, 25% was advisable and in other cases parole should not ever be granted. The Board would have to make those determinations at the time.

REP. MC GEE referred to the suggested amendment to page 2 regarding victims being notified of escape or release.

Mr. Day said they do that now and would have no objection to including it in the statute.

{Tape: 3; Side: A; Approx. Counter: 20.9}

Closing by Sponsor:

REP. BOHARSKI said victim notification was covered under separate legislation already passed out of the committee. He addressed the confusion about the dangerous/nondangerous designations and the intent of this bill to clarify it. He said it was frustrating that it could not be fixed overnight, but they were on the right track and as the process progresses, it would find resolve. He urged the passage of both bills.

Motion: **REP. MC GEE MOVED TO ADJOURN.**

{Comments: This set of minutes is complete on three 60-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 12:05 PM.

Bob Clark
BOB CLARK, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 2/13/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓ late 11 AM	✓	
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓ late 8 Am	✓	
Rep. Liz Smith	✓ late 7:50	✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 15
DATE 2/13/95
HB 357

February 12, 1995

Testimony HB 357
Hearing House Judiciary
February 13, 1995

Crime, punishment and public expectations are all important topics to our own personal safety, how we invest limited resources and the kind of society we create for our children. I believe we would all agree that in order to be effective our criminal justice system must be firm, fair and decisive. Criminal offenders must be held accountable and some must be separated from society for life. But the hard part is how to achieve this goal while continuing to recoginize the individual freedom, circumstance, and choices involved in human behavior.

To make our discussion even more challenging let me put forth a few examples:

If I were to describe a criminal offense which involved deliberate stalking and a premeditated viscious murder I'm guessing this committee will have alot of common ground regarding the appropriate penalty.

However, if I described a criminal offense which included an unemployed alcoholic, from an abusive family who out of negliegence in a vehicle or in a bar fight caused the death of an innocent victim the picture may not be so clear.

If I described a offender who is 19 but has committed two previous burglaries or an offender who has 3 childern and a drug habit and is found guilty of felony theft, again, the answers may not be so clear.

All these criminal acts are wrong and deserve firm and fair punishment from society; but as well, each involves a myraid of individual circumstances that may need to be considered before we pass

EXHIBIT 15
DATE 2-13-95
HB 357

judgment.

This may seem ~~as~~ a long way around to get to HB 357; but in all the rhetoric about crime have we really taken the time to ask those we serve to help develope the appropriate penalties. Have we taken the time to ensure those we serve have the information necessary to make informed decisions about something as important and costly as crime and punishment.

HB 357 establishes a sentencing commission whoose task is to involve the public at the community level in these important decisions. As we reshape government and work to respond more effectively to the public isn't it time we quit guessing and established a process to really ask and then build a system to respond to those wishes.

HB 357 provides that opportunity for a thoughtful approach to give guidance to

judges, evaluate good time, consider correctional resources to improve public safety and the restoration of victims of crime. Consequently, on behalf of the Governor and the Department I hope you will vote do pass on HB 357 + HB 356

EXHIBIT 16
DATE 2/13/95
HB 356 & 357

TO: RICK DAY

FROM: TED CLACK Ted

RE: TIME SERVED ON PRISON SENTENCES

DATE: 13 FEBRUARY 1995

The following data describe the average sentence, the average time served and the average percent of sentence served by inmates released in fiscal years 1990 through 1994.

	FISCAL YEAR				
	1994	1993	1992	1991	1990
AVG. SNT. YRS	9.6	10.6	9.4	9.8	9.4
AVG. YRS. SERVED	3.65	3.79	3.37	3.52	3.22
AVG. PCT. SERVED	38	36	36	36	34

EXHIBIT 17
DATE 2/13/95
HB 384, 357

AVERAGE SENTENCE LENGTH, IN MONTHS, OF PRISON ADMISSIONS IN EIGHT MOUNTAIN WEST STATES. 1989 - 1993.

STATE	1993	1992	1991	1990	1989
ARIZONA	53.6	57.4	*	56.4	53.7
COLORADO	81.8	75.7	79.1	80.0	85.0
IDAHO	81.0	80.0	83.0	81.3	80.0
MONTANA	150.0	124.8	126.0	133.2	138.0
NEVADA	127.2	151.2	*	75.0	*
NEW MEXICO	57.0	62.0	*	60.0	43.0
UTAH	*	*	*	*	*
WYOMING	69.4	85.0	<58.0	69.5	89.0

AVERAGE RELEASE LENGTH OF STAY, IN MONTHS, OF INMATES RELEASED FROM PRISON IN EIGHT MOUNTAIN WEST STATES. 1989 - 1993.

STATE	1993	1992	1991	1990	1989
ARIZONA	26.3	27.0	24.0	24.0	24.0
COLORADO	22.0	22.0	22.0	21.0	25.0
IDAHO	39.0	41.0	40.7	42.0	41.4
MONTANA	44.4	39.7	41.0	37.1	36.9
NEVADA	23.8	22.3	*	54.0	36.0
NEW MEXICO	15.2	16.1	33.0	24.0	15.0
UTAH	26.6	28.5	17.0	25.0	24.4
WYOMING	25.4	29.0	28.2	29.5	26.0

SOURCE: CORRECTIONS YEARBOOK, CRIMINAL JUSTICE INSTITUTE, INC. and DCHS data.

EXHIBIT 18
DATE 2/13/95
HB 356 & 357

AVERAGE LENGTH OF STAY IN MONTHS OF RELEASED PRISON INMATES:

EIGHT MOUNTAIN STATES. 1989 - 1993.

	RELEASE LENGTH OF STAY IN MONTHS				
STATE	1993	1992	1991	1990	1989
ARIZONA	26.3	27.0	24.0	24.0	24.0
COLORADO	22.0	22.0	22.0	21.0	25.0
IDAHO	39.0	41.0	40.7	42.0	41.4
MONTANA	44.4	39.7	41.0	37.1	36.9
NEVADA	23.8	22.3	*	54.0	36.0
NEW MEXICO	15.2	16.1	33.0	24.0	16.0
UTAH	26.6	28.5	17.0	25.0	24.4
WYOMING	25.4	29.0	28.2	29.5	26.0

SOURCE: THE CORRECTIONS YEARBOOK. CRIMINAL JUSTICE INSTITUTE

* Data not available from Nevada corrections office.

EXHIBIT 19
DATE 2/13/95
HB 356 & 357

RELATIVE RANKS OF EIGHT MOUNTAIN WEST STATES:

AVERAGE SENTENCE LENGTH OF PRISON ADMISSIONS.

RANK	1993	1992	1991	1990	1989
1	MONTANA	NEVADA	MONTANA	MONTANA	MONTANA
2	NEVADA	MONTANA	IDAHO	IDAHO	WYOMING
3	COLORADO	WYOMING	COLORADO	COLORADO	COLORADO
4	IDAHO	IDAHO	WYOMING	NEVADA	IDAHO
5	WYOMING	COLORADO	*	WYOMING	ARIZONA
6	NEW MEX.	NEW MEX.	*	NEW MEX.	NEW MEX.
7	ARIZONA	ARIZONA	*	ARIZONA	*
8	*	*	*	*	*

* Data not available for some years from corrections offices in Arizona, Idaho, Nevada, New Mexico, Utah

EXHIBIT 21
DATE 2/13/95
357 HB 357

MY NAME IS ANITA M. RICHARDS

MY ADDRESS IS BOX 498, SEELEY LAKE, MT. 59868

I LIVE IN SEELEY LAKE, MONTANA AND HAVE LIVED THERE FOR 32 YEARS.

I AM AM MARRIED TO DANIEL R. RICHARDS AND HAVE BEEN MARRIED TO HIM FOR 33 YEARS.

I AM THE STEP-MOTHER TO JAMES A. RICHARDS, WHO WAS SHOT AND KILLED BY HIS WIFE BECKY RICHARDS.

I MARRIED RON WHEN JIM WAS 4 YEARS OLD. JIM WAS KILLED MARCH 5, 1992 AND WOULD HAVE BEEN 34 YEARS OLD ON MARCH 26, 1992.

I AM A VICTUM OF MURDER.

MY FAMILY HAD TO SUFFER AT THE TIME OF OUR SON'S DEATH.

MY FAMILY HAD TO SUFFER DURNING THE TIME OF THE TRIAL AND THE CONVICTION OF BECKY RICHARDS, WHO WAS SENT TO THE MONTANA WOMEN'S CORRECTIONAL CENTER FOR ~~30 YEARS~~ Life plus 60 years.

MY FAMILY IS NOW SUFFERING UNDER THE CURRENT LEGISLATION AND CORRECTIONAL POLICIES THAT ARE NOW IN PLACE IN MONTANA.

THERE IS NO LEGISLATIVE OVERSIGHT OVER THE CORRECTIONS POLICIES.

THERE SHOULD BE OVERSIGHT TO THESE POLICIES. SOMEONE HAS TO BE RESONSIBLE AND ACCOUNTABLE TO MAKE SURE POLICIES ARE ESTABLISHED AND FOLLOWED. I AM REQUESTING YOU BE THAT BODY.

I AM HERE TODAY ASKING YOU TO PASS HOUSE BILL 357, TO ENACT A COMMISSION ON SENTENCING TO STUDY SENTENCING PRACTICES, GUIDELINES, AND THE EFFECTS OF SENTENCES.

THANK YOU...

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2-18-95

BILL NO. HB 357 SPONSOR(S) Rep. Boharski

PLEASE PRINT PLEASE PRINT PLEASE PRIN

NAME AND ADDRESS	REPRESENTING	Support	Oppos
Mike Salvagni	Gallatin County Attorney	✓	
Anita Richards	Seeley Lake, MT	✓	
Sharon Bakerson	MACoMT	✓	
Laurie Koutnik	Christian Coalition of MT	✓	
Jeff Sherlock		-	
Craig Thomas	Board of Pardons	✓	
Janet Hill	MSP	✓	
DAVE OHLER	Corrections	✓	
Shannon Gaynier		-	
JOHN CONNOR	MCAA Dept of Justice	✓	
RON RICHARDS	MYSELF	✓	
Craig Thomas	Board of Pardons	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORM ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

EXECUTIVE ACTION ON HB 356

Motion: **REP. BOHARSKI MOVED HB 356 DO PASS.**

Motion/Vote: **REP. BOHARSKI MOVED TO AMEND HB 356. (Amendment 1 of EXHIBIT 3) The motion carried unanimously.**

Motion: **REP. MC GEE MOVED A CONCEPTUAL AMENDMENT TO HB 356 AT LINE 9, SUBSECTION (F) TO INCLUDE VICTIMS.**

Discussion: **REP. BOHARSKI** remembered from testimony on sex offender bills that sometimes it would not be prudent to notify the victim but should be left to the discretion of the prosecutor.

REP. KOTTEL addressed the same issue and **REP. MC GEE** clarified his amendment and at her suggestion included the victim's family in the amendment.

REP. GRIMES could not think of a situation where they would not want to notify the victim or the victim's family. If there were such a case, they could put the provision at the end of the amendment under consideration.

REP. BOHARSKI said it seemed to him that they had included in another bill that they would be notified if they had requested to be notified. It was his concern to be consistent with other legislation.

REP. GRIMES pointed out that the institution would not know who the victim was.

CHAIRMAN CLARK suggested that the sheriff notify the victim or victim's family.

Motion/Vote: **REP. MC GEE MADE A SUBSTITUTE MOTION TO AMEND ACCORDING TO A CONCEPTUAL AMENDMENT TO INCLUDE THE SUGGESTIONS. (Amendment 2 of EXHIBIT 3) The motion carried unanimously.**

Motion/Vote: **REP. ANDERSON MOVED HB 356 DO PASS AS AMENDED. The motion carried 18 - 0. REPS. WYATT, MOLNAR, MC CULLOCH and SHEA voted by proxy. REP. SMITH was absent.**

EXECUTIVE ACTION ON HB 357

Motion: **REP. ANDERSON MOVED HB 357 DO PASS.**

Discussion: **REP. SOFT** reminded the committee that there had been a suggestion at the hearing that there be a legislative oversight committee to hold the departments accountable for these activities.

REP. CURTISS remembered the comment.

REP. BOHARSKI said the make-up of the commission would include enough representation. He remembered the comments as referring to HB 356. The committee was satisfied that the question had been addressed.

Vote: **The motion carried 18 - 0. REPS. WYATT, MOLNAR and SHEA voted by proxy. REP. SMITH was absent.**

EXECUTIVE ACTION ON HB 160

Motion: **REP. CURTISS MOVED HB 160 DO PASS.**

Discussion: **REP. CURTISS** asked to segregate the amendments. She first discussed proposed amendments 1 through 13 on **EXHIBIT 4** as having to do with notification. The bill as originally written asked for written permission and she preferred that it remain that way. But the amendment addressed the suggestions from others to change it to written notice.

REP. SOFT asked who had proposed the amendments.

REP. CURTISS thought they were the ones proposed by **REP. BOHARSKI** and although she had never seen a formal copy of those, she had drawn up these herself to reflect his suggestions.

REP. GRIMES said he believed he had raised the concerns when the bill was first discussed during executive action. His opinion was that these amendments would allow the bill to pass through the system.

Motion: **REP. BOHARSKI MOVED TO RECONSIDER (WITHDRAW) HIS CONCEPTUAL AMENDMENTS MADE DURING PREVIOUS EXECUTIVE ACTION. The motion carried unanimously.**

Motion: **REP. CURTISS MOVED TO AMEND HB 160, ITEMS 1 THROUGH 13. EXHIBIT 4**

Discussion: **REP. CURTISS** further discussed the amendments, 14 - 19 on **EXHIBIT 4** as dealing with the concern people had relative to the responsibility the county attorney would have in prosecution. She thought they were valid concerns and believed that amendments 14 through 19 addressed those concerns.

Vote: **The motion carried on adoption of amendments one through thirteen, 13 - 6. REPS. CAREY, HURDLE, WYATT, MC CULLOCH, SHEA and KOTTEL voted no.**

Motion: **REP. CURTISS MOVED AMENDMENTS 14 - 19 ON EXHIBIT 4.**

{Tape: 2; Side: B}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 2/15/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

February 15, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 357** (first reading copy -- white) **do pass.**

Signed: Bob Clark

Bob Clark, Chair

Committee Vote:
Yes 18, No 0.

391244SC.Hbk

purchase the Jaws of Life equipment, and also to maintain that equipment, which was very expensive. He recounted a story about the U.S. Army. In years past, they dealt with their drinking and drug problems by ending the career of any person convicted of a DUI. He said it cleaned up the problem very quickly. Because of the "hammer," he said many people who might have taken the chance stopped taking that chance. Those people became responsible individuals in dealing with alcohol. He hoped this bill would bring the same results. He told the committee that the tragedy occurring in the Flathead last year involving the **Campbells'** daughter might have been averted if the perpetrator, who was a repeat offender, had been dealt with before.

{Tape: 1; Side: B; Approx. Counter: 00, Comments: poor recording}

HEARING ON HB 356 and HB 357

Opening Statement by Sponsor:

REPRESENTATIVE WILLIAM BOHARSKI, House District 79 from the Flathead Valley, introduced HB 356 and HB 357 which had been worked on by everyone in the country, he said. He thanked the Department of Corrections and Human Services for their assistance on the technical work. Basically, these bills would change the rules of the game. The judges, prosecutors, victims and all of society do not know what it means when a judge sentences a person to a prison term. He said legislators (including himself) and society were responsible. He said it had been a mistake in the past to put the money spent on the prison system on the table as a negotiating tool when it came time to balance the budget. He also guessed that public awareness brought a willingness to spend additional money on the problem. On HB 356, he said, language had been removed from the bill. Anywhere a reference to Title 53-30-105 was used, it referred to "good time," which the bill was eliminating at the beginning of the 1997 biennium. At present, they did not have the prison capacity to deal with it, but he hoped for construction. Page 2 amended the innocuous section on how consecutive sentences were served. The House Judiciary put some amendments on how much time the department had to notify folks at the local level, and the intent of the locals for notifying victims. Section 4, Line 23, changed the language from 1/2 to 1/4, appearing as though it reduced the prison time, but, by eliminating good time, it ends up being the same thing. In addition, they eliminated the "dangerous" and "non-dangerous" offender statutes. They were not reducing sentences for anyone in this bill. He discussed the argument for taking away good time, but said it was a powerful tool for the department to use. The sponsor briefly explained each section of the bill. He said they were changing how the concept of good time worked. If left to him, he would eliminate it tomorrow, he said. Because of the money required for prison space, it would take a good number of years for the resolution of the problem. **REPRESENTATIVE BOHARSKI** said in light of that problem, the Department of Corrections and Human Services had requested HB 357. He said

judges were jacking up sentences to make sure individuals served at least a minimal amount of time. If they change the rules with the elimination of the good time provisions, they would certainly have a wreck on their hands with the state prison system. Judges currently sentenced people to 40 years, hoping they would serve one or two or five. If they change the rules, a sentence would be for 40 years when they really only wanted them to serve for ten. **REPRESENTATIVE BOHARSKI** stated that the fiscal note on the bill was far too low. He projected the amount to be upwards of $100,000 to $150,000 range. The money would be discussed when HB 2 made its way through the system. He said they must take a look at: 1) what the judges and prosecutors are doing to deal with current sentencing guidelines, and 2) perhaps some of the sentences in statute need to be changed because the top end of the sentences had been increased in many cases. Title 45 statute and what really goes on in the prisons were very interdependent upon each other, he stated.

Proponents' Testimony:

Rick Day, Director, Department of Corrections and Human Services, read written testimony. **(EXHIBIT 3)**

John Connor, Bureau Chief, County Prosecutor Services Bureau, Department of Justice, represented the Governor's Advisory Council on Corrections and Correction Policy and the Truth In Sentencing Sub-Committee, also the Attorney General's office whose Law Enforcement Advisory Council who supported this measure. He added that the **Montana County Attorneys Association** supported both measures as well. He said **REPRESENTATIVE BOHARSKI's** depiction of the issue was correct in that it was an absolute mess which none of the prosecutors can understand. It made it difficult or impossible to explain the ramifications of a particular sentence to a victim, and also made it impossible for judges to tell the individual how much time they would be sentenced to. He said it was very frustrating for the people in the criminal justice system to address this system. Judge Lympus, during the Sub-committee hearings for the Truth in Sentencing Council, suggested that they do away with "good time" altogether. He said they could not do that because there were no sentencing incentives provided without "good time" to the defendant in looking at potential rehabilitation. "Good time" was also used by the prison officials as an effective management tool. They set up a "good time" study group, which ended up as HB 356. While it may not be actual, "truth in sentencing," he said it was more truth than they had now, and they saw the need to approach it on a more gradual basis. The most significant example to them in terms of confusion is found in Section 46-23-201 which allows for the designation of dangerous or non-dangerous offenders. Those terms are misnomers, he said, because people who commit acts of violence and who are dangerous can be designated non-dangerous. People who are potentially not dangerous, because of their history, can be designated dangerous. More accurately, they should be described as, "repeat," or

"persistent," offenders. The statute says that a dangerous designation would require one-half of the time before parole eligibility, and if designated non-dangerous, one-fourth of the time must be served. It talks about, "less good time received," but says in any event, if a person got a sentence for a period of years, the parole would become eligible in 17 and 1/2 years. If a person commits a homicide, for example, and gets a 100-year sentence, that person is parole eligible in 17 and 1/2 years. If another person got a sentence of 50 years, he, too, would become eligible in 17 and 1/2 years. Explaining that to victims, he said, was a travesty, and justifiably so. He said the most arguments prosecutors had with the Department of Corrections were over the bill passed in the last legislature which allowed the Department to grant discretionary "good time" toward parole eligibility without any restrictions. Prison overcrowding became a reason for those decisions and the prosecutors objected to it. He said they finally came to agreement that the "good time" provisions need to be phased out gradually, which was proposed. The fiscal note points out that the population of the prison may increase and present some substantial financial problems if the courts do not take into account these changes in the law after 1997. Based on his experience, the courts would take it into consideration. This bill is not a perfect system, he said, but he didn't know what a perfect system would be with the confusion in the law. He stated that HB 357 was also a good start. In answer to why do they need HB 356 if they were going to do the study under HB 357, he said the two bills are not inconsistent. There are problems that HB 356 addresses that need to be fixed now. If the study is done, they may make some recommendations to retain some of the existing law. HB 357 gives them the opportunity for a more detailed, long-range approach. He encouraged support of the bills.

Mike Salvagni, Gallatin County Attorney, also a member of the Governor's Advisory Council on Corrections; Chairman, Sub-Committee dealing with Sex Offenders, spoke in favor of the bills. He said the bills considered by the committee on lifetime supervision of sex offenders and DNA testing were part of his committee. He praised **Rick Day** and **Governor Racicot** who had led the way in responding to public outcry concerning the criminal justice system, in addition to **REPRESENTATIVE BOHARSKI. Mr. Connor** had characterized the present criminal system as a, "mess," he said, but he thought it was a fraud. The manner in which prison time and parole eligibility was determined is a fraud, he maintained. He supported the revision in HB 356 concerning parole eligibility. He focused on the dangerous and non-dangers designation system. He said they were nothing more than a component in a formula to determine a date for parole eligibility of an inmate. The passage of HB 356 and the establishment of these truth-in-sentencing requirements are a beginning of the attempt to restore and maintain confidence in the criminal justice system. He cited the **Larry Moore/Brad Brisbin** murder case, in which **Moore** was convicted of shooting **Brisbin** and disposing of the body (the first case in Montana in

which DNA testing was used for conviction). **Moore** was designated as a non-dangerous offender. He said to explain that to **Mrs. Brisbin**, the mother of the victim, and the family, was a complicated situation they couldn't understand, nor could the public. The removal of these designations for the purposes of determining parole would not only clarify the system, but would remove the negative perceptions of the public. He argued that the current system was an insult to the public and the victims and a contradiction of the murderous behavior of some cases. A judge could still restrict the eligibility date if he thought that the particular defendant required more time, which was current law. He stated that we need to do better. We need truth-in-sentencing. **Mr. Salvagni** also supported HB 357 because there was so much more to do, and the information was not available.

Laurie Koutenik, representing the Montana Christian Coalition, supported both HB 356 and HB 357. Her organization had surveyed the candidates in the last election. One of the questions was about truth-in-sentencing because they had been hearing from the public of their desire for harsher sentences, tougher crime bills and accountability. 100 per cent of the respondents, regardless of party designation, supported the concept of truth-in-sentencing. She asked the committee to hear the concerns of the public when criminals are released back into their communities in what they consider to be an unreasonable amount of time.

Dennis Paxinos, Yellowstone County Attorney, said he was not as enthusiastic as **Mr. Salvangi,** but would rise to support the bills. Yellowstone County would register between 900 and 1,000 felonies in the current year, he said. The next largest county would be Missoula, with perhaps 450 cases last year, and Cascade County filed 400. He spent a good deal of time with victims, he said. It was difficult to speak to survivors of homicides, explaining why the death penalty would not be imposed, mostly because there were few criteria in Montana under which it would ever be imposed. There must be a kidnapping or the murder of a uniformed officer, for example. In explaining the sentence probability, it was like a labyrinth, he said, with dangerous designation, weapon additions, good time, and other variables. This bill would help them, he maintained. In the past, the state had balanced the budgets on the backs of the victims over and over again. These bills would make elected officials responsible. If passed, the public could hold the judge responsible for sentences, making the judge a better judge. It would also make the prosecutors more responsible with the knowledge of the time expected in the sentence. Everyone would know what the playing field was and what the rules were. He lacked enthusiasm somewhat because he felt the bills did not go far enough. He urged support.

Kathy McGowan, appeared on behalf of the Montana Sheriffs and Peace Officers Association. She said the Board of Directors wholeheartedly supported both HB 356 and HB 357.

Craig Thomas, Executive Director of the State Board of Pardons, said they were responsible for executive clemency, supervised release and parole in the State of Montana. He spoke in favor of the bills. He had worked in the field of corrections as a correctional officer, probation officer and counselor for 16 years. During that period, the major complaint he'd heard was the victim's misunderstanding of the sentencing impositions and time served. The second area was the dangerous and non-dangerous designations, which made people extremely angry when a sex offender was declared non-dangerous and a check forger called dangerous. He urged the passage of HB 356 and HB 357.

Ron Richards, represented himself as a victim, citizen and taxpayer. He supported the measures because it was a common-sense approach to a problem that was long overdue. For each of the 1,200 inmates in Montana, there were between 1 to 20 victims each. He stated that the citizenry knew it would cost money and were willing to pay more to obtain a just system that served all.

Opponent's Testimony: None.

Questions From Committee Members and Responses:

SENATOR REINY JABS asked for clarification of "good time." **REPRESENTATIVE BOHARSKI** explained that the elimination of good time would be delayed for two years because of the overcrowded situation at the prison now. Under current law, good time is mandatory. Upon passage and approval of the bill, good time becomes, "may". He had some discussion with the department about someone who had currently earned good time and he inquired if it could be taken away. Under the rules and disposition of the department, they said it could not, but he thought there was a strong possibility that it could. Then, in January, 1997, good time would be eliminated altogether. **SENATOR BARTLETT** asked **Director Day** about the function of good time as a management tool. **Mr. Day** said there was a split decision in the corrections system over the subject of good time. Some think it was an effective tool, others felt that it encouraged inmates to participate in programs to give the impression that they were rehabilitating just to earn the good time. There is no conclusive evidence. After good time is eliminated, if the inmate has the ability to get out earlier under parole, then the Board of Pardons would require their participation in rehab programs. They had been asked to look at good time provisions, and they would have adequate time to come back to the next legislature for revision, if required. He felt it had been fairly considered in a fairly thoughtful direction. **SENATOR BARTLETT** asked if an effective date of April, 1997, would be a more accommodating date regarding the legislative session if there was further recommendation to maintain good time or considerations made. **Director Day** said the council went through the same discussion and the date was a compromise. If the

legislature would decide to re-impose good time, they could make it applicable and he did not think reducing the sentence would be illegal. He said the system could still function.

SENATOR BARTLETT asked for further information. She supported the bill, but was interested in the department's best estimates of not only these bills, but ALL the changes proposed in this session that will affect our corrections system. He agreed. **SENATOR SHARON ESTRADA** asked **Mr. Thomas** for an estimate of how many people were paroled last year. **Mr. Thomas** said the Parole Board releases approximately 350 people a year into adult supervision. In response to a further question, he said there were 1,355 prisoners now. There was not a quota system, he said.

{Tape: 2; Side: A; Approx. Counter: 00 Comments: poor quality sound}

Closing by Sponsor:

REPRESENTATIVE BOHARSKI stated that before he compiled this bill he read an NRA crime report which stated that 80 per cent of the prisoners had a possibility of getting 20 per cent shorter time-served amounts if they did good time. He stated that he had voted in this session to spend four times the amount of money than in all the sessions he'd been there. Legislators are responsible to the public to explain that they just cannot build 1,000 new prison cells in the next 6 months. It's impossible. This bill would be a step in the right direction, though. It is not a panacea to solve all the problems. This bill would make the judges more accountable, and it would eliminate some of the negotiations prosecutors engage in with defense attorneys, making the presentation to the judge much cleaner.

HEARING ON HB 84

Opening Statement by Sponsor:

REPRESENTATIVE ROBERT STORY, House District 24, Stillwater County and the Southern and Eastern portion of Sweetgrass County, sponsored HB 84. It is a simple bill, he said, allowing the people assigned to the Department of Corrections and Human Services to transfer people suffering from a mental disease or defect to the State Hospital or the State Prison, for example.

Proponents' Testimony:

Dan Anderson, Administrator, Mental Health Division, Department of Corrections and Human Services, read and presented written testimony. **(EXHIBIT 4)** He also presented written testimony from **Carl L. Keener, M.D., Medical Director, Montana State Hospital,** who was unable to be present. **(EXHIBIT 5)**

Motion: **SENATOR ESTRADA MOVED THAT HB 356 BE CONCURRED IN.**

Discussion: **Valencia Lane** asked the Department of Corrections to provide reviews and summaries that would include estimates of these bills and all related bills that have passed both houses at this point for total costs. It would be provided to the committee members before they schedule to finish hearing all the bills. **SENATOR STEVE DOHERTY** said the fiscal note estimated 898 additional inmates in the prison by fiscal year 2001. He wanted to know how many people would be added during the interim and what the estimated costs would be. He supported the bill, but worried about the impact in five or six years and wanted to know the whole story on the fiscal note. **SENATOR CRIPPEN** agreed that the legislation would be costly, and that even the presentation on the floor should include this financial implication, should the bill pass committee. His constituents were in concurrence with the fiscal impact.

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 357

Motion: **SENATOR ESTRADA MOVED THAT HB 357 BE CONCURRED IN.**

Discussion: **SENATOR CRIPPEN** questioned **Director Day** if some of the provision of HB 356 were included in HB 357 to be studied. **Mr. Day** said it was correct. **CHAIRMAN CRIPPEN** further asked if there was the possibility if what they had enacted in HB 357 will be modified or rejected? **Director Day** said that was correct. Part of the concept of HB 357 was to provide for an opportunity to gather information on various impacts of the bill and provide it to the next session. **SENATOR CRIPPEN** asked if the commission met once a quarter and if they had enough time in the biennium to bring it back to the next legislature? **Mr. Day** said the commission would have to go right to work. **SENATOR CRIPPEN** asked if they would use other sources, including the legislative council. He said it was a big, big, big undertaking. The fiscal note was too low, he said, but the time element concerned him the most. **Mr. Day** said some research with other states had already been done. He agreed that they would begin immediately upon approval and passage of the bill. **SENATOR JABS** asked if the changes would be approved by the next legislative session, and not made by the commission? **SENATOR CRIPPEN** said it would be decided by the 55th legislative session. **SENATOR LINDA NELSON** stated that the fiscal note was appallingly low. Since it is going into statute, it bothered her that it was that inaccurate. **SENATOR ESTRADA** said the sponsor acknowledged it was low. **CHAIRMAN HOLDEN** asked about his intention in the presentation of the bill to the taxation committee. **Mr. Day** said their initial fiscal note was $180,000, and they were working on it yet. He said the sponsor asked for the higher amount. **SENATOR CRIPPEN** asked for an updated supplemental fiscal note requested by the sponsor.

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

HEARING ON HB 345

Opening Statement by Sponsor:

REPRESENTATIVE ROYAL JOHNSON, House District 10, Billings, presented HB 345. He said the bill would increase fines upon people who probably ought to have fines increased. The money would be used for a particularly important function that had been experimented with by the Montana Highway Patrol. On Page 2, Line 6, he pointed out the $15 surcharge on the DUI fine. The money would be used to buy small videocameras for patrol cars to film DUI stops and arrests. In their experiments, they had found that conviction rates were extremely high.

Proponents' Testimony:

Dennis Paxinos, Yellowstone County Attorney, Billings, said he had drafted the bill, along with others. He thanked the sponsor. He started in 1985 as a prosecutor and defense attorney. One of the most difficult juries to convince beyond a reasonable doubt was a DUI case. The jury can identify with that defendant because most people have had a similar occasion, or could have. People had friends tell them to sit quietly in front of the TV camera at the station house, and juries were loathe to convict a person based on the pictures. The video cameras would be watching the car, just like the officer. Perhaps it would swerve or do something to attract the attention of the officer. These sophisticated cameras are like a penlight pen. It would accompany the officer to the car, recording the interview. When the person comes back to the car, the camera will record that transaction as well as the person's movements and if the eyes are glassy. This would prevent all kinds of civil lawsuits that counties are involved in now because of complaints of rudeness, etc. It would protect citizens from the rogue officer as well. When used it a situation of domestic abuse, it would record the sound and sights of the situation. He said in Yellowstone County the DUI Task Force had generated enough funds through service groups to buy three cameras, one for the Patrol, one for the Police Department and one for the Sheriff's Office. With the implementation of those cameras, they had not had one single DUI arrest ever go to trial. The people had plead guilty in 100 per cent of the cases. The defense attorney sees the same thing and knows that the judge/jury would convict them. It cuts down on expenses for trials, juries, judges, plus they get convictions. The cameras cost about $5,000 each, he said. This bill is flexible. It would allow the local law enforcement agency that gets the conviction to determine what type of law enforcement equipment it needs. He predicted $100,000 per year statewide would be collected.

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3/14/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

March 14, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 357 (third reading copy -- blue), respectfully report that HB 357 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Sen. Estrada
Senator Carrying Bill

591250SC.SPV

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 3-14-95
BILL NO. HB 356, 357

Testimony HB 356 and 357
Truth in Sentencing
Sentencing Commission
Hearing House Judiciary
February 13, 1995
Senate Judiciary
March 14, 1995

"Truth in Sentencing" a politically popular phrase but just exactly how can we achieve it and how do we know what we have is not working. Let's take just a moment to take a look at what we have now.

Suppose a criminal offender was sentenced to 12 years in prison. Sounds simple enough and you may assume under the current law this means he or she stays 12 years at Montana State Prison . Not so, our system allows for good time to be applied to reduce the sentence; however, the amount the inmate earns varies widely- 15 days a month if the inmate is involved in an industries program, 13 days if enrolled in school, 3 days if in self improvement and even 10 days per month in maximum security. As you can see the rate that good time reduces time served will change almost daily.

Now where are we with our 12 year sentence. Would you believe under the present system after applying good time and considering the average inmate this would mean given a 12 year sentence the inmate would serve approximately 6 years to discharge.; but given the various good time calculations I just referred to how would anyone including the victim, judge and offender really know the minimum length of time to be served in a correctional institution.

Suppose at this point I've given you a basic idea of how to calculate good time and you feel more comfortable with the system. But hold on because we are not done yet. Actually the offender with the 12 year sentence may not serve the six years.

Why, because the system also allows for parole. So let's take another look at the 12 year sentence. If the sentence is 12 years we must first know if the judge imposed a dangerous designation if not then the offender is eligible for parole in three years. But not so because the statute requires that good time apply to parole eligibility which means the offender would be eligible in 1 1/2 years.

What has this all done to our original sentence of 12 years. Essentially it is possible that a 12 year sentence could mean only 1 1/2 years in prison or less as an inmate within 2 years of parole is eligible for pre-release placement.

If I have confused you at this point, let me throw a few other points in. Actually, an offender sentenced to an longer period will be eligible for parole in 17 1/2 years and a life sentence could actually mean 15 years under the current law.

Where has all this gotten us. According to Corrections Yearbook statistics Montana's average length of sentence is 150 months which is the highest in the United States. In addition, our average time served of 44 months is the longest of the eight mountain states. However, our percentage of sentence served is below average. Consequently, Montana's criminal offenders, when compared to the performance of other states, serve a significant portion of their sentence. But given our length of sentence the public sees a system in which the offender serves only a small percentage of the prison sentence.

I hope this example has described the problem. The Governor, the Department and the Governor's Council on Corrections and Criminal Justice believe HB 356 begins to provide solutions. If passed the bill would reform the good time system to essentially go to "bad time". An inmate would receive a flat day for day good time grant and would lose the good time only for disciplinary reasons. So up front all would know a sentence of 12 years

EXHIBIT 3
DATE 3-14-95
HB 356, 357

would mean a minimum of 6 years in the institutional system. If the inmate incurred disciplinary violations the time would increase. In addition, the parole eligibility would be governed through a flat 25% which essentially equals the present dangerous designation requirement. Finally, by the end of January 1997 good time would be eliminated entirely for any offender sentenced to prison.

So if you accept this legislation after January 1997 an offender sentenced to 12 years would either serve the 12 years or at least 3 if granted parole during the first year of eligibility and be on parole supervision for 9 years.

You might wonder what is the impact on our overcrowded system. That has been taken into consideration. This bill is a TRUTH bill not a mandatory sentencing bill. The legislation was designed to simplify sentencing so everyone could understand but do so in a way that allowed us to operate under within the resources requested through the Governor's executive budget. The first steps to reform good time and move to a flat percentage for parole eligibility reflect a neutral impact on populations. The step of removing good time depends largely on the sentencing patterns of Judges. If judges continue to sentence under today's length of sentence then the corrections population expansion will be dramatic. If ,however, judges respond to the elimination of good time and flat parole eligibility then the average length of sentence will drop and the impact on prison population will be more controlled.

However, can we just predict a change in sentencing patterns will be forthcoming, will the elimination of good time have a negative impact on rehabilitation, and do we really know what the public believes are appropriate penalties for criminal behavior. I would say no and that is why HB 357 which establishes a SENTENCING COMMISSION is critical to the task of reforming our criminal justice system to meet public expectations

and accomplish truth in sentencing .

Crime, punishment and public expectations are all important topics to our own personal safety, how we invest limited resources and the kind of society we create for our children. I believe we would all agree that in order to be effective our criminal justice system must be firm, fair and decisive. Criminal offenders must be held accountable a some must be separated from society for life. But the hard part is how to achieve this goal while continuing to recoginize the individual freedom, circumstance, and choices involved in human behavior.

To make our discussion even more challenging let me put forth a few examples:

If if were to describe a criminal offense which invovled deliberate stalking and a premeditated viscious murder I'm guessing this committee will have alot of common ground regarding the appropriate penalty.

However, if I described a criminal offense which included an unemployed alcoholic, from an abusive family who out of negliegence in a vehicle or in a bar fight caused the death of an innocent victim the picture may not be so clear.

If I described a offender who is 19 but has committed two previous burglaries or an offender who has 3 childern and a drug habit and is found guilty of felony theft again the answers may not be so clear.

All these criminal acts are wrong and deserve firm and fair punishment from society; but as well, each involves a myraid of individual circumstances that may need to be considered before we pass judgment.

EXHIBIT 3
DATE 3-14-95
HB 356, 357

This may seem as a long way around to get to HB 357; but in all the rhetoric about crime have we really taken the time to ask those we serve to help develope the appropriate penalties. Have we taken the time to ensure those we serve have the information necessary to make informed decisions about something as important and costly as crime and punishment.

HB 357 establishes a sentencing commission whoose task is to involve the public at the community level in these important decisions. As we reshape government and work to respond more effectively to the public isn't it time we quit guessing and established a process to really ask and then build a system to respond to those wishes.

HB 356 & 357 provide that opportunity for a thoughtful approach to give guidance to judges, evaluate good time, consider correctional resources to improve public safety and the restoration of victims of crime. Consequently, on behalf of the Governor and the Department I hope you will vote do pass on HB 356 &357.